



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2021-0001; FRL-10014-01-R8]

Air Plan Approval; Montana; Revisions to Regional Haze State Implementation Plan and Partial Withdrawals to Regional Haze Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Montana on March 25, 2020, addressing regional haze. Specifically, EPA is proposing to approve a SIP revision for the first implementation period of the Clean Air Act's (CAA) regional haze program that addresses the nitrogen oxides (NO_x) and sulfur dioxide (SO₂) Best Available Retrofit Technology (BART) requirements for two electric generating unit (EGU) facilities, as well as proposing to withdraw portions of the Federal Implementation Plan (FIP) promulgated by EPA in 2012 (2012 regional haze FIP) addressing the NO_x, SO₂ and particulate matter (PM) BART requirements for two cement kilns and the PM BART requirements for the same two EGU facilities. This action also addresses the United States Court of Appeals for the Ninth Circuit's June 9, 2015 vacatur and remand of portions of the FIP. EPA is proposing this action pursuant to sections 110 and 169A of the CAA.

DATES: Written comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. *Public hearing:* If anyone contacts us requesting a public hearing on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent *Federal Register*

document. Contact Jaslyn Dobrahner at dobrahner.jaslyn@epa.gov, to request a hearing or to determine if a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2021-0001, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6252, email address: dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean EPA.

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I. What Action is EPA Proposing?

EPA is proposing to approve two Montana Board of Environment Review Orders pertaining to regional haze requirements for four facilities¹ into the state's SIP. Specifically, EPA is proposing to approve: (1) NO_x, SO₂, and PM BART emission limits along with associated requirements for the Ash Grove Cement Company's Montana City Plant (Montana City) and GCC Three Forks, LLC's Trident Plant (Trident); (2) the PM BART emission limits along with associated requirements for Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2 (Colstrip Units 1 and 2); (3) the determination that Colstrip Units' 1 and 2 enforceable shutdown date of July 1, 2022, satisfies the outstanding NO_x and SO₂ BART requirements for that facility; and (4) the determination that the outstanding NO_x and SO₂ BART requirements for Corette (as well as the remaining PM BART requirements for Corette in EPA's FIP) are satisfied because the source is no longer in operation and has been demolished.

¹ Ash Grove Cement Company's Montana City Plant; GCC Three Forks, LLC's Trident Plant; JE Corette Steam Electric Station; and Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2.

Consistent with our proposed approval of Montana’s regional haze SIP for the PM BART emission limits and other requirements for Colstrip Units 1 and 2 and Corette along with the NO_x, SO₂, and PM BART emission limits and other requirements for Montana City and Trident, we are also proposing to withdraw those corresponding portions of the 2012 regional haze FIP found at 40 CFR 52.1396.

In addition, through our proposed approval of the NO_x and SO₂ BART determinations for Corette and Colstrip Units 1 and 2, we are addressing the U.S. Court of Appeals for the Ninth Circuit’s June 9, 2015 remand of portions of the 2012 regional haze FIP in this action, including EPA’s response to a public comment regarding the use of the CALPUFF visibility model in determining BART at Colstrip Units 1 and 2.

II. Background

A. Requirements of the Clean Air Act and EPA’s Regional Haze Rule

In CAA section 169A, Congress created a program for protecting visibility in certain national parks and wilderness areas. This section of the CAA establishes “as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.”²

EPA promulgated a rule to address regional haze, a particular type of visibility impairment, on July 1, 1999.³ The 1999 Regional Haze Rule revised the existing visibility regulations⁴ to integrate provisions addressing regional haze and established a comprehensive

² 42 U.S.C. 7491(a). Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to “mandatory Class I Federal areas.” Each mandatory Class I Federal area is the responsibility of a “Federal Land Manager.” 42 U.S.C. 7602(i). When we use the term “Class I area” in this section, we mean a “mandatory Class I Federal area.”

³ 64 FR 35714 (July 1, 1999) (amending 40 CFR part 51, subpart P).

⁴ EPA had previously promulgated regulations to address visibility impairment in Class I areas that is “reasonably attributable” to a single source or small group of sources, i.e., reasonably attributable visibility impairment (RAVI). 45 FR 80084, 80084 (December 2, 1980).

visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300-51.309. EPA most recently revised the Regional Haze Rule on January 10, 2017.⁵

The CAA requires each state to develop a SIP to meet various air quality requirements, including protection of visibility.⁶ Regional haze SIPs must assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. A state must submit its SIP and SIP revisions to EPA for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA; that is, the SIP is federally enforceable. If a state fails to make a required SIP submittal, or if we find that a state's required submittal is incomplete or not approvable, then we must promulgate a FIP within two years to fill this regulatory gap, unless the state corrects the deficiency.⁷

B. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs EPA to require states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires state implementation plans to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate the "Best Available Retrofit Technology" (BART) as determined by the states. Under the Regional Haze Rule, states are directed to conduct source-by-source BART determinations for such "BART-eligible" sources that may reasonably be anticipated to cause or contribute to any visibility

⁵ 82 FR 3078 (January 10, 2017). Under the revised Regional Haze Rule, the requirements 40 CFR 51.308(d) and (e) apply to first implementation period SIP submissions and 51.308(f) applies to submissions for the second and subsequent implementation periods. 82 FR 3087; see also 81 FR 26942, 26952 (May 4, 2016).

⁶ 42 U.S.C. 7410(a), 7491, and 7492(a).

⁷ 42 U.S.C. 7410(c)(1).

impairment in a Class I area.⁸ States are required to include emission limits and associated requirements (e.g., monitoring, reporting, and recordkeeping requirements) corresponding to their BART determinations in their SIPs.⁹

Rather than requiring source-specific BART controls, states also have the flexibility under the Regional Haze Rule to adopt alternative measures, as long as the alternative provides greater reasonable progress towards natural visibility conditions than BART (i.e., the alternative must be “better than BART”).¹⁰

C. Long-term Strategy and Reasonable Progress Requirements

In addition to the BART requirements, the CAA’s visibility protection provisions also require that states’ regional haze SIPs contain a “long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal....”¹¹ For the first implementation period of the regional haze program, the regulatory requirements governing states’ long-term strategies are located at 40 CFR 51.308(d). Under these provisions, the long-term strategy must address regional haze visibility impairment for each mandatory Class I area within the state and for each mandatory Class I area located outside the state that may be affected by emissions from the state. It must include the enforceable emission limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals.¹² The reasonable progress goals, in turn, are calculated for each Class I area based on the control measures states have selected by analyzing the four statutory “reasonable progress” factors, which are “the costs of compliance,

⁸ 40 CFR 51.308(e). BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301. EPA designed the Guidelines for BART Determinations Under the Regional Haze Rule (Guidelines) “to help States and others (1) identify those sources that must comply with the BART requirement, and (2) determine the level of control technology that represents BART for each source.” 40 CFR part 51, appendix Y, section I.A. Section II of the Guidelines describes the four steps to identify BART sources, and section III explains how to identify BART sources (i.e., sources that are “subject to BART”).

⁹ See 40 CFR 51.301 (defining BART as an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reductions for each pollutant emitted by an existing stationary facility”).

¹⁰ 40 CFR 51.308(e)(2) and (3).

¹¹ 42 U.S.C. 7491(b)(2)(B).

¹² 40 CFR 51.308(d)(3).

the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirement.”¹³ Thus, a state considers the four reasonable progress factors in setting the reasonable progress goal by virtue of the state having first considered them, and certain other factors listed in section 51.308(d)(3) of the Regional Haze Rule, when deciding what controls are necessary for sources and must thus be included in the long-term strategy. Then, the numerical levels of the reasonable progress goals are the predicted visibility outcome of implementing the long-term strategy in addition to ongoing pollution control programs stemming from other CAA requirements.

Unlike BART determinations, which are required only for the first regional haze planning period SIPs,¹⁴ states are required to submit updates to their long-term strategies, including updated four-factor reasonable progress analyses and reasonable progress goals, in the form of SIP revisions on July 31, 2021, and at specific intervals thereafter.¹⁵ In addition, each state must periodically submit a report to EPA at five-year intervals beginning five years after the submission of the initial regional haze SIP, evaluating the state’s progress towards meeting the reasonable progress goals for each Class I area within the state.¹⁶

D. Monitoring, Recordkeeping, and Recording

The CAA requires that SIPs, including regional haze SIPs, contain elements sufficient to ensure emission limits are practically enforceable. CAA section 110(a)(2) states that the monitoring, record keeping, and reporting provisions of states’ SIPs must (A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the

¹³ 42 U.S.C. 7491(g)(1); 40 CFR 51.308(d)(1)(i).

¹⁴ Under the Regional Haze Rule, SIPs are due for each regional haze planning period, or implementation period. The terms “planning period” and “implementation period” are used interchangeably in this document.

¹⁵ 40 CFR 51.308(f). The deadline for the 2018 SIP revision was moved to 2021. 82 FR 3078 (January 10, 2017); see also 40 CFR 51.308(f). Following the 2021 SIP revision deadline, the next SIP revision is due in 2028. 40 CFR 51.308(f).

¹⁶ Id. §51.308(g); §51.309(d)(10).

applicable requirements of this chapter;... (C) include a program to provide for the enforcement of the measures described in paragraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter;... (F) require, as may be prescribed by the Administrator – (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection.¹⁷

Accordingly, 40 CFR part 51, subpart K, Source Surveillance, requires the SIP to provide for monitoring the status of compliance with the regulations in it, including “[p]eriodic testing and inspection of stationary sources,”¹⁸ and “legally enforceable procedures” for recordkeeping and reporting.¹⁹ Furthermore, 40 CFR part 51, appendix V, Criteria for Determining the Completeness of Plan Submissions, states in section 2.2 that complete SIPs contain: “(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels”; and “(h) Compliance/enforcement strategies, including how compliance will be determined in practice.”

E. Consultation with Federal Land Managers (FLMs)

The Regional Haze Rule requires that a state, or EPA if promulgating a FIP, consult with Federal Land Managers (FLMs) before adopting and submitting a required SIP or SIP revision or a required FIP or FIP revision. Under 40 CFR 51.308(i)(2), a state, or EPA if promulgating a FIP, must provide an opportunity for consultation no less than 60 days prior to holding any

¹⁷ 42 U.S.C. 7410(a)(2)(A), (C), and (F).

¹⁸ 40 CFR 51.212(a).

¹⁹ Id. §51.211.

public hearing or other public comment opportunity on a SIP or SIP revision, or FIP or FIP revision, for regional haze. Further, when submitting a SIP or SIP revision, a state must include a description of how it addressed any comments provided by the FLMs. Likewise, EPA must include a description of how it addressed any comments provided by the FLMs when considering a FIP or FIP revision.²⁰

F. Clean Air Act 110(l)

Under CAA section 110(l), EPA cannot approve a plan revision “if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.”²¹

CAA section 110(l) applies to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable or maintenance for one or more of the six criteria pollutants. EPA interprets section 110(l) as applying to all National Ambient Air Quality Standards (NAAQS) that are in effect, including those for which SIP submissions have not been made.²² However, the level of rigor needed for any CAA section 110(l) demonstration will vary depending on the nature and circumstances of the revision.

G. Regulatory and Legal History of the Montana Regional Haze FIP

On September 18, 2012, EPA promulgated a FIP that included NO_x, SO₂, and PM BART emission limits for three units at two power plants and two cement kilns, as well as an emission limit for a natural gas compressor station to satisfy the reasonable progress requirements.²³ EPA

²⁰ 40 CFR 51.308(i).

²¹ 42 U.S.C. 7410(l). Note that “reasonable further progress” as used in CAA section 110(l) is a reference to that term as defined in section 301(a) (i.e., 42 U.S.C. 7501(a)), and as such means reductions required to attain the National Ambient Air Quality Standards (NAAQS) set for criteria pollutants under CAA section 109. This term as used in section 110(l) (and defined in section 301(a)) is *not* synonymous with “reasonable progress” as that term is used in the regional haze program. Instead, section 110(l) provides that EPA cannot approve plan revisions that interfere with regional haze requirements (including reasonable progress requirements) insofar as they are “other applicable requirement[s]” of the CAA.

²² In general, a section 110(l) demonstration should address all pollutants whose emissions and/or ambient concentrations would change because of a plan revision.

²³ 77 FR 57864 (September 18, 2012).

promulgated a FIP in this instance because Montana did not submit a regional haze SIP as required under section 110 of the CAA.²⁴

Several parties challenged the portion of the FIP addressing EPA's NO_x and SO₂ BART determinations at the power plants, Colstrip Units 1 and 2 and Corette.²⁵ On June 9, 2015, the U.S. Court of Appeals for the Ninth Circuit vacated and remanded the portions of the FIP²⁶ related to the NO_x and SO₂ BART emission limits for Corette and Colstrip Units 1 and 2 and remanded EPA's response in the 2012 final rule to a public comment regarding the use of the CALPUFF visibility model in determining BART for Colstrip Units 1 and 2.²⁷ The BART emission limits for the two cement kilns, the PM emissions limits for the EGUs, and the reasonable progress requirements for the compressor station were not at issue in the petitions filed with the Ninth Circuit Court of Appeals.²⁸

On September 12, 2017, EPA amended aspects of the remaining 2012 FIP by (1) revising the NO_x emission limit for one of the cement kilns, and (2) correcting errors we made in our original FIP regarding the reasonable progress determination for the natural gas compressor station and the instructions for compliance determinations for PM BART emission limits at the electrical generating units (EGUs) and cement kilns.²⁹ Ultimately, EPA removed the reasonable progress requirements for the natural gas compressor station from the FIP after correcting the error that resulted in the source no longer being subject to reasonable progress requirements.

III. EPA's Evaluation of Montana's Regional Haze SIP Revision

²⁴ Letter from Richard H. Opper, Director Montana Department of Environmental Quality to Laurel Dygowski, EPA Region 8 Air Program, June 19, 2006. Based off this letter, EPA made a determination finding of failure to submit a SIP by Montana. This triggered a mandatory duty clock to have EPA either promulgate a FIP or approve a SIP within two years of the EPA finding. See 74 FR 2392 (January 15, 2009).

²⁵ Several parties petitioned the Ninth Circuit Court of Appeals to review EPA's NO_x and SO₂ BART determinations at the power plants, Colstrip and Corette (PPL Montana, LLC, the National Parks Conservation Association, Montana Environmental Information Center, and the Sierra Club). *National Parks Conservation Association v. EPA*, 788 F.3d 1134 (9th Cir. 2015).

²⁶ *Id.*

²⁷ *National Parks Conservation Association v. EPA*, 788 F.3d 1134 (9th Cir. 2015).

²⁸ *Id.*

²⁹ 82 FR 42738 (September 12, 2017).

Montana's regional haze SIP revision contains two Montana Board of Environment Review Orders (Board Orders) pertaining to regional haze requirements for (1) cement kiln sources, and (2) electrical generating unit sources. The emission limits and other requirements in these orders are intended to address the SO₂ and NO_x BART requirements for Colstrip Units 1 and 2 and Corette that were previously vacated by the Ninth Circuit and to replace the limits that currently exist in EPA's FIP with SIP-based limits for PM BART for Colstrip Units 1 and 2 and Corette, and SO₂, NO_x, and PM BART requirements for cement kilns. The 2012 regional haze FIP codified those provisions at 40 CFR 52.1396 *Federal implementation plan for regional haze* and contains the following paragraphs: *(a) Applicability, (b) Definitions, (c) Emissions limitations, (d) Compliance date, (e) Compliance determinations for SO₂ and NO_x, (f) Compliance determinations for particulate matter, (g) Recordkeeping for EGUs, (h) Recordkeeping for cement kilns, (i) Reporting, (j) – (k) Reserved, (l) Notifications, (m) Equipment operation, (n) Credible evidence, (o) CFAC notification, (p) M2Green Redevelopment LLC notification.*

To assess whether the SIP revision is consistent with the regional haze requirements of the CAA, we evaluated the revisions against the regional haze requirements under the CAA and the Regional Haze Rule. For those provisions that are proposed to replace the FIP provisions, we also compared those components of the Board Orders with the corresponding provisions in the FIP as well as the regional haze requirements under the CAA and EPA's regulations.

As noted previously, Montana's 2020 regional haze SIP revision contains enforceable emission limitations and other enforceable requirements intended to replace the FIP-based enforceable requirements in the Code of Federal Regulations. It does not, however, contain the technical analyses and other demonstrations and information required to support BART determinations pursuant to 50 CFR 51.308(e). Thus, if this rulemaking is finalized as proposed, the State's Board Orders will replace the enforceable emission limits and associated requirements in EPA's FIP with SIP-based requirements. However, other regional haze

requirements, including analytical requirements associated with both BART and reasonable progress, will remain satisfied by EPA's previously promulgated FIP.

A. Requirements for Cement Kilns

Montana's regional haze requirements for cement kilns are contained in Exhibit A of the Ash Grove Cement Company's Montana City Plant, and GCC Three Forks, LLC's Trident Plant Board Order Plant dated October 18, 2019 (Board Order for cement kilns).

The applicability language of the Board Order for cement kilns is identical to the applicability language of the FIP for cement kilns found at 40 CFR 52.1396(a). EPA's FIP determination that Ash Grove – Montana City Plant and GCC Three Forks – Trident Plant are subject to BART was consistent with the requirement to determine which BART-eligible sources may reasonably be anticipated to cause or contribute to any visibility impairment in any class I area and are thus subject to BART.^{30,31} Therefore, because our FIP analysis and requirements are consistent with the applicable regional haze requirements and because *Section 1 – Applicability* of the Board Order for cement kilns is identical to our FIP, we propose to approve *Section 1 – Applicability* of the Board Order for cement kilns as satisfying the applicable requirements under 40 CFR 51.308(e).^{32,33} Likewise, the definitions found at 40 CFR 52.1396(b) in the FIP applicable to cement kilns are identical to the definitions in *Section 2 – Definitions* Board Order for cement kilns in the FIP. Thus, we also propose to approve *Section 2 – Definitions* of the Board Order for cement kilns as meeting the applicable regional haze requirements.

The BART determinations and associated compliance dates contained in the 2012 regional haze FIP at 40 CFR 52.1396(c)(2) and 40 CFR 52.1396(c)(4) were made pursuant to a five-factor analysis consistent with the regional haze regulations at 40 CFR 51.308(e) and

³⁰ 40 CFR 51.308(e)(1)(ii).

³¹ See Docket EPA-R08-OAR -2011-0851 for EPA's 2012 regional haze FIP for the analysis.

³² The Trident cement kiln was previously under the ownership of Oldcastle Materials Cement Holdings, Inc. when the FIP was last amended. See 82 FR 42738 (September 12, 2017).

³³ The notification requirements found at 40 CFR 52.1396(o) and 40 CFR 52.1396(p) for CFAC and M2Green Redevelopment LLC, respectively, are no longer applicable beyond July 31, 2018. Thus, the SIP submittal does not contain requirements for these sources. Regional haze requirements for these sources may be addressed in future regional haze planning periods, if applicable.

Appendix Y (BART Guidelines).³⁴ The PM, NO_x, and SO₂ emission limitations and associated compliance dates for cement kilns in *Section 3 – Emissions Limitations*, and *Section 4 – Compliance Dates* of the Board Order for cement kilns are identical to the requirements found in the FIP. Therefore, because our FIP analysis and requirements are consistent with the regional haze requirements under the CAA and the emission limits and compliance dates in *Section 3 – Emissions Limitations* and *Section 4 – Compliance Dates* of the Board Order for cement kilns are identical to our FIP, we propose to approve these portions of the state’s SIP revision as meeting the applicable regional haze requirements.

With respect to the compliance determinations for NO_x and SO₂ for cement kilns, the requirements in *Section 5(1) – Compliance determinations for SO₂ and NO_x* of the Board Order for cement kilns are identical to the requirements found in the FIP at 40 CFR 52.1396(e)(3) and 40 CFR 52.1396(e)(4). With respect to compliance determinations for PM for cement kilns currently found in the FIP at 40 CFR 52.1396(f)(2), Montana is relying on requirements contained in the Board Order for cement kilns (*Section 5(2) – Compliance determinations for particulate matter*) as well as compliance-determination provisions in an applicable National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAPS).

Specifically, the state is relying on NESHAPS LLL for portland cement plants,³⁵ contained in Montana’s SIP through the reference of 40 CFR part 63 in ARM 17.8.106, to satisfy applicable requirements related to clinker production determinations, required number of tests per run, and applicable Compliance Assurance Monitoring (CAM) plans. Together, these requirements contain the applicable PM compliance determinations requirements for cement kilns. Because Montana’s compliance-determination provisions are the same as the corresponding provisions in EPA’s FIP, which were based on the analysis and rationale that meet the applicable regional haze

³⁴ See Docket EPA-R08-OAR -2011-0851 for EPA’s 2012 regional haze FIP for the analysis.

³⁵ 40 CFR 63.1340 – 63.1359.

requirements under the CAA at 40 CFR 51.308(e), we propose to approve this section as meeting the applicable regional haze requirements.

The recordkeeping and reporting requirements found in the Board Order for cement kilns (*Section 6 – Recordkeeping, Section 7 – Reporting*) are identical to the requirements found in the FIP at 40 CFR 52.1396(h) and 40 CFR 52.1396(i), respectively, for cement kilns. Thus, because our FIP analysis and requirements are consistent with the regional haze requirements under 40 CFR 51.308(e) and *Section 6 – Recordkeeping* and *Section 7 – Reporting* are identical to our FIP, we propose to approve these sections of the SIP revision as meeting the applicable regional haze requirements. Likewise, the notification and equipment operation requirements contained in the Board Order for cement kilns (*Section 8 – Notifications, Section 9 – Equipment Operation*) are identical to the requirements found in the FIP at 40 CFR 52.1396(l) and 40 CFR 52.1396(m), respectively. Because our FIP analysis and requirements are consistent with the regional haze requirements under 40 CFR 51.308(e) and *Section 8 – Notifications* and *Section 9 – Equipment Operation* of the Board Order for cement kilns are identical to our FIP, we also propose to approve these sections of the SIP revision as meeting the applicable regional haze requirements.³⁶

Finally, for the purposes of determining whether a source is in compliance with the requirements of the Board Order for cement kilns, Montana will rely on ARM 17.8.132 – *Credible Evidence*³⁷ which does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance if the appropriate compliance test procedures or methods had been performed. We propose to find this language equivalent to the language found in the FIP as well as meeting the applicable requirements at 40 CFR 51.212(c).

³⁶ 40 CFR 52.1396(j)-(k) are reserved.

³⁷ ARM 17.8.132 *Credible Evidence* was last updated in Montana's SIP on November 20, 2002. (67 FR 70009)

In summary, we propose to find that the NO_x, SO₂, and PM BART regional haze requirements pertaining to cement kilns for the first planning period found in the SIP revision are sufficient to replace the FIP provisions for these sources. We therefore propose to approve the Board Order for cement kilns in its entirety.

B. Requirements for Electrical Generating Units

Montana's regional haze requirements for EGUs are contained in Exhibit A of the Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2; and JE Corette Steam Electric Station Board Order dated October 18, 2019 (Board Order for EGUs).

The Corette facility shut down operations and surrendered its permits in 2015 and is now dismantled, thus making its future operation impossible.^{38,39} Therefore, we propose to find that Corette no longer has BART obligations that need to be addressed within Montana's regional haze SIP. Additionally, Colstrip Units 1 and 2 are required, per consent decree, to permanently cease operations by July 1, 2022, and the State is requesting EPA to incorporate the shutdown commitment in its SIP.^{40,41} On January 14, 2020, Talen Montana, LLC informed the Montana Department of Environmental Quality that Colstrip Units 1 and 2 permanently ceased operation on January 2, 2020, and January 3, 2020, respectively.⁴² However, given that the enforceable shutdown date is still in the future, we are analyzing the Board Order as though Colstrip Units 1 and 2 were still in operation and will shut down by July 1, 2022.

The applicability language of the Board Order for EGUs is identical to the applicability language of the FIP for EGUs found at 40 CFR 52.1396(a). EPA's FIP determination that Corette and Colstrip Units 1 and 2 are subject to BART was consistent with the requirement to determine which BART-eligible sources may reasonably be anticipated to cause or contribute to

³⁸ Board Order for EGUs, Sections 1 and 3.

³⁹ 81 FR 11727 (March 7, 2016); 81 FR 28718 (May 10, 2016).

⁴⁰ The permanent shutdown of Colstrip Units 1 and 2 is required by Consent Decree in Case 1: 13-cv-00032-DLC-JCL filed September 6, 2016.

⁴¹ Board Order for EGUs, Section 3.

⁴² Letter from Talen Montana to MT DEQ, January 14, 2020.

any visibility impairment in any class I area and are thus subject to BART.^{43,44} Therefore, because our FIP analysis and requirements are consistent with the regional haze requirements under 40 CFR 51.308(e)(1)(ii) and *Section 1 – Applicability* of the Board Order for EGUs is identical to our FIP, we propose to approve *Section 1 – Applicability* of the Board Order for EGUs as satisfying the applicable requirements under 40 CFR 51.308(e).^{45,46} Likewise, except for the exclusion of the definition for *Boiler Operating Day* in the Board Order for EGUs, the definitions found in *Section 2 – Definitions* of the Board Order for EGUs are identical to the definitions at 40 CFR 52.1396(b) of the FIP and are based on the analysis and rationale stated in the FIP. Because *Boiler Operating Day* is used exclusively in a section of the FIP pertaining to NO_x and SO₂ compliance determinations for EGUs that is no longer applicable due to the Ninth Circuit vacatur and remand⁴⁷ we also propose to approve *Section 2 – Definitions* of the Board Order for EGUs.

With respect to NO_x and SO₂ emission limitations and associated compliance dates for Colstrip Units 1 and 2, the original requirements of the 2012 regional haze FIP at 40 CFR 52.1396(c)(1) and 40 CFR 52.1396(c)(4) were vacated by the Ninth Circuit as previously described. Thus, Montana’s regional haze SIP revision NO_x and SO₂ BART determinations for Colstrip Units 1 and 2 are original determinations (i.e., BART determinations in the first instance). As described in *Section 3 – Emissions Limitations* of the Board Order for EGUs, Montana determined NO_x and SO₂ BART to be an enforceable and permanent shutdown of Colstrip Units 1 and 2 no later than July 1, 2022⁴⁸ due to the request of the owner/operator.

⁴³ 40 CFR 51.308(e)(1)(ii).

⁴⁴ See Docket EPA-R08-OAR -2011-0851 for EPA’s 2012 regional haze FIP for the analysis.

⁴⁵ As previously noted in the preamble as well as in Montana’s Board Order for EGUs, the Corette facility no longer exists.

⁴⁶ The Colstrip Steam Electric Station, Units 1 and 2 was previously under the ownership of PPL Montana, LLC.

⁴⁷ On June 9, 2015, the U.S. Court of Appeals for the Ninth Circuit vacated the NO_x and SO₂ BART emission limits for Corette and Colstrip Units 1 and 2. However, the definition for Boiler Operating Day, used exclusively in the method for compliance determinations for NO_x and SO₂ for EGUs in 40 CFR 52.1396(e)(2), remained in the FIP. See *National Parks Conservation Association v. EPA*, 788 F.3d 1134 (9th Cir. 2015).

⁴⁸ The permanent shutdown of Colstrip Units 1 and 2 is required by Consent Decree in Case 1: 13-cv-00032-DLC-JCL filed September 6, 2016. The Consent Decree is in effect until January 1, 2023, unless the two parties invoke the Dispute Resolution provisions provided in Section VII of the Consent Decree.

Accordingly, Montana included the requirement that Colstrip Units 1 and 2 cease operation no later than July 1, 2022, in the facility's Title V Operating Permit⁴⁹ as well as the Board Order for EGUs. Although EPA's regulations do not require states to consider a shutdown of an existing unit as part of their BART analyses, neither the Regional Haze Rule or BART Guidelines prohibit states or EPA from considering a shutdown as part of a BART determination if the strategy is proposed by the source; a state can then include such an option in their SIP as a strategy for reducing emissions. Because the enforceable shutdown of Colstrip Units 1 and 2 eliminates all emissions by July 1, 2022, which is within the statutory timeframe for compliance with BART ("as expeditiously as practicable but in no event later than five years after the date of approval of a plan revision under this section"⁵⁰), the State may treat the shutdowns as the most stringent control option available. We propose to find that the enforceable shutdown date submitted in section 3(1)(b) of the Board Order for EGUs satisfies Montana's obligation to require SO₂ and NO_x BART for Colstrip Units 1 and 2 per 40 CFR 51.308(e).

In contrast to the SO₂ and NO_x BART emission limits for Colstrip Units 1 and 2, which the Ninth Circuit vacated, the PM limits for these units have remained in effect. Therefore, the State's Board Order for EGUs incorporates the FIP's PM limits for inclusion in the SIP. With respect to the PM emission limitation and associated compliance date for Colstrip Units 1 and 2, the requirements found in the Board Order for EGUs in *Section 3 – Emissions Limitations*, and *Section 4 – Compliance Dates* are identical to the requirements found in the FIP at 40 CFR 52.1396(c)(1) and 40 CFR 52.1396(c)(4), respectively. EPA's FIP emission limits and compliance dates are based on the analysis and that meet the applicable regional haze requirements under the CAA at 40 CFR 51.308(e)(1)(ii) and the BART Guidelines. Therefore, we propose to approve *Section 3 – Emissions Limitations*, and *Section 4 – Compliance Dates* of the Board Order for EGUs as meeting the applicable PM BART requirements for Colstrip Units

⁴⁹ Montana Department of Environmental Quality Final Operating Permit #OP0513-17, February 4, 2021.

⁵⁰ 42 U.S.C. 7491(b)(2)(A), (g)(4).

1 and 2. In addition to the FIP-equivalent PM emission limitation and associated compliance date that we propose to incorporate into Montana's SIP, the requirement that Colstrip Units 1 and 2 cease operation no later than July 1, 2022, is also applicable.

Therefore, and for the reasons stated previously, we are proposing to approve the PM, NO_x, and SO₂ emissions limitations and associated compliance deadlines for EGUs contained in *Section 3 – Emissions Limitations* and *Section 4 – Compliance Dates* of the Board Order for EGUs of the State's SIP revision in its entirety.

With respect to compliance determinations for PM for EGUs found in the FIP at 40 CFR 52.1396(f)(1), Montana is relying on identical requirements found in the Board Order for EGUs (*Section 5 – Compliance Determinations*) as well as compliance determination provisions based in an applicable NESHAP. Specifically, the state is relying on NESHAP UUUUU for coal and oil-fired EGUs⁵¹ contained in Montana's SIP through the reference of 40 CFR part 63 in ARM 17.8.106 to satisfy applicable requirements related to the required number of tests per run and applicable CAM plans. Together, these requirements contain the applicable PM compliance determination requirements for EGUs based on the analysis and rationale stated in the FIP and meet the applicable regional haze requirements at 40 CFR 51.308(e); therefore, we propose to approve *Section 5 – Compliance Determinations* of the Board Order for EGUs. We are also proposing to find that compliance determinations for NO_x and SO₂ for EGUs are not necessary, and therefore not contained in the Board Order for EGUs, because Montana determined NO_x and SO₂ BART to be an enforceable and permanent shutdown of Colstrip Units 1 and 2 by July 1, 2022.

The recordkeeping and reporting requirements found in the Board Order for EGUs (*Section 6 – Recordkeeping, Section 7 – Reporting*) are identical to the requirements found in the FIP at 40 CFR 52.1396(g) and 40 CFR 52.1396(i). EPA's requirements are based on the analysis

⁵¹ 40 CFR 63.9980 – 63.10042.

and rationale stated in the FIP⁵² and meet the applicable regional haze requirements under the CAA. Therefore, we are proposing to approve *Section 6 – Recordkeeping* and *Section 7 – Reporting* of the Board Order for EGUs as meeting the applicable regional haze requirements at 40 CFR 51.308(e). There are no SO₂ and NO_x notification requirements for EGUs in the Board Order for EGUs since the SIP revision relies on unit shutdowns to meet the requirements of NO_x and SO₂ BART.⁵³ Lastly, the EGU equipment operation requirements in *Section 8 – Equipment Operation* of the Board Order for EGUs are the same equipment operation requirements found in the FIP at 40 CFR 52.1396(m) for EGUs. Therefore, because our FIP analysis and requirements are consistent with the regional haze requirements and *Section 8 – Equipment Operation* of the Board Order for EGUs is identical to our FIP, we also propose to approve *Section 8 – Equipment Operation* of the Board Order for EGUs as meeting the applicable regional haze requirements under 40 CFR 51.308(e).⁵⁴

Finally, for the purposes of determining whether a source is in compliance with the requirements of the Board Order for EGUs, Montana will rely on ARM 17.8.132 – *Credible Evidence* which does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance if the appropriate compliance test procedures or methods had been performed. We propose to find this language equivalent to the language found in the FIP as well as meeting the applicable requirements at 40 CFR 51.212(c).

In summary, we propose to find that the NO_x, SO₂, and PM BART regional haze requirements pertaining to EGUs for the first planning period found in the SIP revision meet the applicable requirements of the CAA and Regional Haze Rule. These requirements include PM

⁵² Except for the absence of reporting requirements for SO₂ and NO_x because the SIP relies on unit shutdowns within five years in lieu of emission limits for compliance with SO₂ and NO_x BART.

⁵³ On June 9, 2015, the U.S. Court of Appeals for the Ninth Circuit vacated the NO_x and SO₂ BART emission limits for Corette and Colstrip Units 1 and 2; however, EPA has not yet removed the FIP NO_x and SO₂ reporting and notification requirements pertaining to both cement kiln and EGUs found at 40 CFR 52.1396(i) and 40 CFR 52.1396(l), respectively.

⁵⁴ 40 CFR 52.1396(j)-(k) are reserved.

BART emission limits for Colstrip Units 1 and 2 that are identical to the emission limits in EPA's FIP as well as new SO₂ and NO_x BART determinations for Colstrip Units 1 and 2. We also propose to find that the State was not required to make BART determinations or include BART emission limits in its SIP for Corette because the source is no longer in existence. We therefore propose to approve the Board Order for EGUs in its entirety.

C. Consultation with Federal Land Managers

There are 12 Class I Federal areas affected by sources in Montana. The Forest Service manages the Anaconda-Pintler Wilderness Area, Bob Marshall Wilderness Area, Cabinet Mountains Wilderness Area, Gates of the Mountains Wilderness Area, Mission Mountains Wilderness Area, Scapegoat Wilderness Area, and Selway-Bitterroot Wilderness Area. The Fish and Wildlife Service manages the Medicine Lake Wilderness Area, Red Rocks Lake Wilderness Area, and UL Bend Wilderness Area. The National Park Service manages Glacier National Park and Yellowstone National Park.

The Regional Haze Rule grants the FLMs a special role in the review of regional haze FIPs, as summarized in section II.E in this preamble. Because this plan revision includes a proposal to withdraw parts of our 2012 regional haze FIP, we consulted with the Forest Service, Fish and Wildlife Service, and the National Park Service on Thursday, August 26, 2021.⁵⁵

IV. EPA's Proposed Action

A. Montana Regional Haze State Implementation Plan

We are proposing to approve the following elements of Montana's Regional Haze SIP revision as satisfying the applicable requirements for the first regional haze planning period:

- In the Matter of an Order Setting Air Pollutant Emission Limits that the State of Montana may Submit to the Federal Environmental Protection Agency for Revision of the State Implementation Plan Concerning Protection of Visibility, Affecting the Following Facilities: Ash Grove Cement Company's Montana City

⁵⁵ We did not receive any formal comments from the FLM agencies.

Plant, and GCC Three Forks, LLC's Trident Plant. Board Order Findings of Fact, Conclusions of Law, and Order. October 18, 2019, Appendix A.

- In the Matter of an Order Setting Air Pollutant Emission Limits that the State of Montana may Submit to the Federal Environmental Protection Agency for Revision of the State Implementation Plan Concerning Protection of Visibility, Affecting the Following Facilities: Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2, and JE Corette Steam Electric Station JE Corette Steam Electric Station. Board Order Findings of Fact, Conclusions of Law, and Order. October 18, 2019, Appendix A.

B. Federal Implementation Plan Withdrawal

Because we are proposing to find that Montana's SIP revision satisfies the applicable requirements related to the obligation for states' regional haze plans to include BART for the first regional haze planning period, we are also proposing to withdraw the corresponding portions of the 2012 regional haze FIP addressing the NO_x, SO₂, and PM BART emission limits and associated requirements for two cement kilns and the PM BART emission limits and associated requirements for the two EGU facilities contained within our 2012 regional haze FIP at 40 CFR 52.1396. While EPA is proposing to approve the emission limits, compliance determination requirements, and other monitoring, reporting, and recordkeeping requirements associated with BART into Montana's SIP as detailed above, other regional haze requirements for the first implementation period, including requirements related to reasonable progress and analytical requirements related to BART will remain satisfied by EPA's FIP.

C. Clean Air Act Section 110(l)

Under CAA section 110(l), EPA cannot approve a plan revision "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter."⁵⁶

⁵⁶ 42 U.S.C. 7410(l).

The previous sections of this document, our 2012 and 2017 proposed rules, and our 2012 and 2017 final rules explain how the proposed SIP revision will comply with applicable regional haze requirements and general implementation plan requirements, such as enforceability.⁵⁷ Approval of the proposed SIP revision would transfer the NO_x, SO₂, and PM BART emission limits for the cement kilns and the PM BART emission limits for the EGUs along with compliance deadlines, monitoring, recordkeeping, and reporting requirements, and other associated requirements currently found in EPA's 2012 FIP⁵⁸ into Montana's Regional Haze SIP. In addition, the proposed SIP addresses the NO_x and SO₂ BART requirements for Corette and Colstrip Units 1 and 2 in the first instance.⁵⁹ The NO_x and SO₂ BART determination for Corette and Colstrip Units 1 and 2 rely on unit shutdowns, which is the most stringent approach to complying with BART since there will be no NO_x or SO₂ emissions (or PM emissions) after the unit shutdowns. As such, the SIP revision will not interfere with attainment of the NAAQS, reasonable further progress, or other CAA requirements as compared to the 2012 FIP including the vacated portions on the FIP. Accordingly, we propose to find that an approval of the proposed SIP as well as concurrent withdrawal of certain portions of the FIP, are not anticipated to interfere with applicable requirements of the CAA and therefore CAA section 110(*I*) does not prohibit approval of this SIP revision.

V. Ninth Circuit Court of Appeals Remand

This proposed action also addresses the U.S. Court of Appeals for the Ninth Circuit's remand of the NO_x and SO₂ emission limits for Colstrip Units 1 and 2 and Corette as well as its remand of EPA's response to a public comment regarding the use of the CALPUFF visibility model in determining BART for Colstrip Units 1 and 2 in the 2012 final rule.

⁵⁷ 77 FR 23988 (April 20, 2012), 77 FR 57864 (September 18, 2012), 82 FR 17948 (April 14, 2017), 82 FR 42738 (September 12, 2017).

⁵⁸ 40 CFR 52.1396.

⁵⁹ Those requirements were promulgated under the 2012 FIP but had been vacated by the Ninth Circuit in 2015.

Our proposal, if finalized, will address the Ninth Circuit Court of Appeals' remand of NO_x and SO₂ BART for Colstrip Units 1 and 2 and Corette for the first planning period. The unit shutdowns represent the most stringent BART determinations and emission limits since there will be no NO_x and SO₂ emissions after the unit shutdowns, which have occurred or will occur within the statutory time frame for implementing BART. With respect to the court's finding that we did not provide a sufficiently reasoned response to a public comment submitted by PPL Montana, LLC, stating that the maximum potential visibility benefit of selective non-catalytic reduction (SNCR) at Colstrip Units 1 and 2 is below the range of perceptibility and falls within the CALPUFF model's margin of error, meaning such improvement cannot be "reasonably...anticipated" as required by the Act, our proposal approving Colstrip Units 1 and 2 shutdown as meeting the requirements of NO_x and SO₂ BART moots this comment. We, however, still disagree with the comment and provide the following clarifying response:

We do not agree with the commenter's assertion that the modeled visibility improvements from the 2012 regional haze FIP are not reasonably anticipated because EPA failed to account for a "margin of error" in the CALPUFF model. The notion of a calculated "margin of error" or a level at which the model fails to capture visibility improvements that may be "reasonably anticipated" is not part of any modeling guidance and has no legal or regulatory basis or applicability. We fundamentally disagree with the commenter's argument that a CALPUFF result within a purported margin of error cannot show that a visibility improvement is "reasonably anticipated". The phrase "reasonably anticipated" in CAA section 169A(g)(2) is ambiguous and susceptible of interpretation. It is certainly reasonable to anticipate the degree of visibility improvement that results from the correct application (i.e., with an appropriate modeling protocol) of the regulatorily approved modeling tool, even if that degree of improvement is within an alleged margin of error. By contrast, the statutory language of "reasonably certain" clearly does not require a result that means "certain to occur." The commenter's implied interpretation of "reasonably anticipated," i.e. "certain to occur," would be

contrary to the purposes of the statute and write the term “reasonably” out of it. One reason is that all models have an inherent uncertainty. As discussed in EPA’s modeling guidance, the formulation and application of air quality models are accompanied by several sources of uncertainty. “Irreducible” uncertainty stems from the “unknown” conditions, which may not be explicitly accounted for in the model (*e.g.*, the turbulent velocity field). Thus, there are likely to be deviations from the observed concentrations in individual events due to variations in the unknown conditions. “Reducible” uncertainties are caused by: (1) Uncertainties in the “known” input conditions (*e.g.*, emission characteristics and meteorological data); (2) errors in the measured concentrations; and (3) inadequate model physics and formulation.” 40 CFR part 51, appendix W, 2.1.1.a.

Thus, according to the currently promulgated version of appendix W, there are numerous sources of uncertainties in dispersion models. However, the commenter’s implied interpretation of “reasonably anticipated” cannot be what Congress intended. This is true even more so in light of the fact that the BART provisions were added in the 1977 Amendments. At the time, uncertainties with modeling were a great concern – for example, many states used unsophisticated rollback models for their attainment plans, resulting in decisions to control sources that were not well supported. *See, e.g., Cleveland Electric Illuminating Co. v. EPA*, 572 F.2d 1150, 1160-61 (6th Cir. 1978). Given the context, Congress cannot have intended “reasonably anticipated” to mean “certain to occur.” A much more plausible interpretation of “reasonably anticipated” is “can be predicted using current models.”

We also note that, viewed properly, this comment was addressed by the BART Guidelines themselves. As shown by the above discussion, the commenter’s theory is not about the application of a model to a particular situation, it is about the interpretation of the statute itself. When we promulgated the BART Guidelines, we essentially interpreted the phrase “degree of improvement in visibility which may reasonably be anticipated” to be the visibility improvement predicted by CALPUFF, or another appropriate dispersion model. *See* 40 CFR part

51, appendix Y, IV.D.5 (“Use CALPUFF, or other appropriate dispersion model to *determine the visibility improvement expected at a Class I area from the potential BART control technology applied to the source.*”) (emphasis added).

Finally, the degree of visibility improvement from emissions controls is a relative determination. The determination may be the degree of visibility improvement of one control scenario relative to an uncontrolled baseline, or it may be the degree of visibility improvement of one control scenario relative to another control scenario. CALPUFF is reliable for determining relative differences between situations, even when the difference is small. We recognize that the difference in visibility improvement between a BART control case and a baseline case may in some cases be small and treat it accordingly in the evaluation of the BART visibility improvement factor. This is precisely what Congress intended in determining BART: that states (or EPA in a FIP) consider the degree of visibility improvement that can reasonably be anticipated from the BART control scenarios. That a small visibility improvement might fall within an alleged margin of error is a red herring – a small visibility improvement will be weighed less in the BART determination, which is perfectly in line with the statute and Congress’ intent.

This proposal, if finalized, will wholly resolve the Agency’s obligations on remand.

VI. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Montana board orders described in section IV.A of this preamble. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) because it applies to only 4 facilities in the State of Montana.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA), because it revises the reporting requirements for 4 facilities.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities as no small entities are subject to the requirements of this rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action merely transfers the regional haze requirements found in the 2012 regional haze FIP to a SIP and approve the State's permanent closure of two facilities, thus this action is not subject to the requirements of sections 202 or 205 of UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments", requires EPA to develop an accountable process to ensure "meaningful and

timely input by tribal officials in the development of regulatory policies that have tribal implications.”⁶⁰ This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this action. However, EPA did send letters to each of the Montana tribes explaining our regional haze action and offering consultation.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997). EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 establishes federal executive policy on environmental justice.⁶¹ Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as

⁶⁰ 65 FR 67249, 67250 (November 9, 2000).

⁶¹ 59 FR 7629 (February 16, 1994).

appropriate, disproportionately high, and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

In 2012, we determined that our final action would “not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increased the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.”⁶² Because this proposed rule alters the existing requirements for regional haze in the State of Montana by including the enforceable shutdown of two sources and otherwise only transfers existing requirements from a FIP to the SIP, our determination is unchanged from that in 2012. EPA, however, did perform a screening analysis using the EJScreen tool⁶³ to evaluate environmental and demographic indicators for the areas impacted by this proposed action. The results of this assessment are in the docket for this action. These results indicate that areas impacted by this proposed action are not potential areas of EJ concern and are not candidates for further EJ review. EPA is providing this information for public information purposes, and not as a basis of our proposed action. We will consider any input regarding environmental justice considerations received during the public comment period.

⁶² 77 FR 57914 (September 18, 2012).

⁶³ EJSCREEN is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators; available at <https://www.epa.gov/ejscreen/what-ejscreen>.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

2. Amend §52.1370 by revising the table in paragraph (d) to read as follows:

§52.1370 Identification of plan.

* * * * *

(d) * * *

Title/subject	State effective date	Notice of final rule date	NFR citation
(1) Cascade County			
1985 December 5 Stipulation and 1985 October 20 Permit for Montana Refining Company. In the matter of the Montana Refining Company, Cascade County; compliance with ARM 16.8.811, ambient air quality standard for carbon monoxide	12/5/1985	9/7/1990	55 FR 36812
(2) Deer Lodge County			
1978 November 16 Order for Anaconda Copper Smelter. In the Matter of the Petition of the Department of Health and Environmental Sciences for an Order adopting a Sulfur Oxides Control Strategy for the Anaconda Copper Smelter at Anaconda, Montana, and requiring the Anaconda Company to comply with the Control Strategy	11/16/1978	1/10/1980	45 FR 2034
(3) Flathead County			
Air Quality Permit #2667-M, Dated 1/24/92. Plum Creek Manufacturing, Inc	1/24/1992	4/14/1994	59 FR 17700
Stipulation - A-1 Paving, In the Matter of Compliance of A-1 Paving, Kalispell, Montana	9/17/1993	3/19/1996	61 FR 11153
Stipulation - Equity Supply Company, In the Matter of Compliance of Equity Supply Company	9/17/1993	3/19/1996	61 FR 11153

Stipulation - Flathead Road Department #1, In the Matter of Compliance of Flathead Road Department, Kalispell, Montana	9/17/1993	3/19/1996	61 FR 11153
Stipulation - Flathead Road Department #2, In the Matter of Compliance of Flathead Road Department, Kalispell, Montana	9/17/1993	3/19/1996	61 FR 11153
Stipulation - Klingler Lumber Company, In the Matter of Compliance of Klinger Lumber Company, Inc., Kalispell, Montana	9/17/1993	3/19/1996	61 FR 11153
Stipulation - McElroy & Wilkens, In the Matter of Compliance of McElroy and Wilkens, Inc., Kalispell, Montana	9/17/1993	3/19/1996	61 FR 11153
Stipulation - Montana Mokko, In the Matter of Compliance of Montana Mokko, Kalispell, Montana	9/17/1993	3/19/1996	61 FR 11153
Stipulation - Pack and Company, In the Matter of Compliance of Pack and Company, Inc., Kalispell, Montana	9/7/1993	3/19/1996	61 FR 11153
Stipulation - Pack Concrete, In the Matter of Compliance of Pack Concrete, Inc., Kalispell, Montana	9/17/1993	3/19/1996	61 FR 11153
Stipulation - Plum Creek, In the Matter of Compliance of Plum Creek Manufacturing, L.P., Kalispell, Montana	9/17/1993	3/19/1996	61 FR 11153
(4) Gallatin County			
GCC Three Forks, LLC's Trident Plant October 18, 2019 Board Order Findings of Fact, Conclusions of Law, and Order. Setting Air Pollutant Emission Limits For Revision of the State Implementation Plan Concerning Protection of Visibility, Appendix A	10/18/2019	[date of publication of the final rule in the Federal Register]	[Federal Register citation of the final rule]
(5) Jefferson County			
Ash Grove Cement Company's Montana City Plant October 18, 2019 Board Order Findings of Fact, Conclusions of Law, and Order. Setting Air Pollutant Emission Limits For Revision of the State Implementation Plan Concerning Protection of Visibility, Appendix A	10/18/2019	[date of publication of the final rule in the Federal Register]	[Federal Register citation of the final rule]
(6) Lewis and Clark County			

Total Suspended Particulate NAAQS - East Helena, ASARCO Application for Revisions of Montana State Air Quality Control Implementation Plan - Only as it applies to Total Suspended Particulate	4/24/1979	1/10/1980	45 FR 2034
Sulfur Dioxide NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, Asarco Stipulation - 1994 March 15	3/15/1994	1/27/1995	60 FR 5313
Sulfur Dioxide NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, Exhibit A - Asarco Emission Limitations and Conditions, Asarco Incorporated, East Helena, Montana	3/15/1994	1/27/1995	60 FR 5313
Asarco Board Order - 1994 March 18. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions from the Lead Smelter Located at East Helena, Montana, owned and operated by Asarco Incorporated	3/18/1994	1/27/1995	60 FR 5313
Lead NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, American Chemet Stipulation - 1995 June 30	6/30/1995	6/18/2001	66 FR 32760
Lead NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, American Chemet Board Order - 1995 August 4	8/4/1995	6/18/2001	66 FR 32760
Lead NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, Exhibit A - American Chemet Emissions Limitations and Conditions, American Chemet Corporation, East Helena, Montana	6/10/2013	3/28/2018	83 FR 13196
Lead NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, Asarco Stipulation - 1996 June 11	6/11/1996	6/18/2001	66 FR 32760
Lead NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, Asarco Board Order - 1996 June 26	6/26/1996	6/18/2001	66 FR 32760
Lead NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, Exhibit A - Asarco Emission Limitations and Conditions with attachments 1-7, Asarco Lead Smelter, East Helena, Montana	6/26/1996	6/18/2001	66 FR 32760
Lead NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, Asarco Stipulation - 1998 August 13	8/28/1998	6/18/2001	66 FR 32760
Lead NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, Asarco Board Order - 1998 August 28	8/28/1998	6/18/2001	66 FR 32760
Lead NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, Asarco Stipulation - 2000 July 18	9/15/2000	6/18/2001	66 FR 32767

Lead NAAQS - Board Orders, Stipulations, Exhibits, and Attachments, Asarco Board Order - 2000 September 15	9/15/2000	6/18/2001	66 FR 32767
(7) Lincoln County			
Board Order - 1994 December 16 (Stimson Lumber). In the Matter of Compliance of Stimson Lumber Company, Libby, Montana	12/16/1994	9/30/1996	61 FR 51014
Air Quality Permit #2627-M Dated 7/25/91. Stimson Lumber Company (formerly Champion International Corp)	3/19/1993	8/30/1994	59 FR 44627
Stipulation - Stimson Lumber. In the Matter of Compliance of Stimson Lumber Company, Libby, Montana	12/16/1994	9/30/1996	61 FR 51014
(8) Missoula County			
Air Quality Permit #2303M, Dated 3/20/92. Louisiana-Pacific Corporation	3/20/1992	1/18/1994	59 FR 2537
Air Quality Permit #2589M, Dated 1/23/92. Stone Container Corporation	1/24/1992	1/18/1994	59 FR 2537
(9) Rosebud County			
1980 October 22 Permit for Western Energy Company	10/22/1980	4/26/1985	50 FR 16475
Talen Montana, LLC's Colstrip Steam Electric Station, Units 1 and 2 October 18, 2019 Board Order Findings of Fact, Conclusions of Law, and Order. Setting Air Pollutant Emission Limits For Revision of the State Implementation Plan Concerning Protection of Visibility, Appendix A	10/18/2019	[date of publication of the final rule in the Federal Register]	[Federal Register citation of the final rule]
(10) Silver Bow County			
Air Quality Permit #1636-06 dated 8/22/96. Rhone-Poulenc Basic Chemicals Company	8/22/1996	12/6/1999	64 FR 68034
Air Quality Permit #1749-05 dated 1/5/94. Montana Resources, Inc	1/5/1994	3/22/1995	60 FR 15056
(11) Yellowstone County			
Cenex June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area	6/12/1998	5/2/2002	67 FR 22168
Cenex June 12, 1998 Exhibit A (with 3/17/00 Revisions) Emission Limitations and Other Conditions	3/17/2000	5/22/2003	68 FR 27908
Cenex March 17, 2000 Board Order and Stipulation. In the Matter of the Application of the Department of Environmental Quality for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area	3/17/2000	5/22/2003	68 FR 27908

Conoco June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area	6/12/1998	5/2/2002	67 FR 22168
Conoco June 12, 1998 Exhibit A. Emission Limitations and Other Conditions	6/12/1998	5/2/2002	67 FR 22168
Exxon June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area	6/12/1998	5/2/2002	67 FR 22168
Exxon June 12, 1998 Exhibit A (with 3/17/00 Revisions). Emission Limitations and Other Conditions	3/17/2000	5/22/2003	68 FR 27908
Exxon March 17, 2000 Board Order and Stipulation. In the Matter of the Application of the Department of Environmental Quality for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area	3/17/2000	5/22/2003	68 FR 27908
Montana Power June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area	6/12/1998	5/2/2002	67 FR 22168
Montana Power June 12, 1998 Exhibit A, Emission Limitations and Conditions	6/12/1998	5/2/2002	67 FR 22168
Montana Sulphur & Chemical Company June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area	6/12/1998	5/2/2002	67 FR 22168
Montana Sulphur & Chemical Company June 12, 1998 Exhibit A. Emission Limitations and Other Conditions	6/12/1998	5/2/2002	67 FR 22168
Western Sugar June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area	6/12/1998	5/2/2002	67 FR 22168

Western Sugar June 12, 1998 Exhibit A. Emission Limitations and Other Conditions	6/12/1998	5/2/2002	67 FR 22168
Yellowstone Energy Limited Partnership June 12, 1998 Board Order and Stipulation. In the Matter of the Application of the Department of Health and Environmental Sciences for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area	6/12/1998	5/2/2002	67 FR 22168
Yellowstone Energy Limited Partnership June 12, 1998 Exhibit A (with 3/17/00 revisions) Emission Limitations and Other Conditions	3/17/2000	5/22/2003	68 FR 27908
Yellowstone Energy Limited Partnership March 17, 2000 Board Order and Stipulation. In the Matter of the Application of the Department of Environmental Quality for Revision of the Montana State Air Quality Control Implementation Plan Relating to Control of Sulfur Dioxide Emissions in the Billings/Laurel Area	3/17/2000	5/22/2003	68 FR 27908
(12) Other			
JE Corette Steam Electric Station October 18, 2019 Board Order Findings of Fact, Conclusions of Law, and Order. Setting Air Pollutant Emission Limits For Revision of the State Implementation Plan Concerning Protection of Visibility, Appendix A	10/18/2019	[date of publication of the final rule in the Federal Register]	[Federal Register citation of the final rule]

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§52.1396 [Removed and Reserved]

3. Remove and reserve §52.1396.

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